

VZCZCXRO8191
OO RUEHCHI RUEHCN RUEHDT RUEHHM
DE RUEHBK #1320/01 1531018
ZNY CCCCC ZZH
O 021018Z JUN 09
FM AMEMBASSY BANGKOK
TO RUEHC/SECSTATE WASHDC IMMEDIATE 7177
INFO RUEAIIA/CIA WASHINGTON DC IMMEDIATE
RUEKDIA/DIA WASHINGTON DC IMMEDIATE
RHEHNSC/NSC WASHINGTON DC IMMEDIATE
RUEKJCS/SECDEF WASHINGTON DC IMMEDIATE
RHHMUNA/CDR USPACOM HONOLULU HI IMMEDIATE
RUEHXS/ASSOCIATION OF SOUTHEAST ASIAN NATIONS
RUEHBJ/AMEMBASSY BEIJING 7095
RUEHBY/AMEMBASSY CANBERRA 9715
RUEHUL/AMEMBASSY SEOUL 5535
RUEHKO/AMEMBASSY TOKYO 1654
RUEHWL/AMEMBASSY WELLINGTON 2693
RUEHCHI/AMCONSUL CHIANG MAI 6614

C O N F I D E N T I A L SECTION 01 OF 02 BANGKOK 001320

SIPDIS

NSC FOR PHU

E.O. 12958: DECL: 06/02/2018
TAGS: [PGOV](#) [PHUM](#) [PINR](#) [PREL](#) [PTER](#) [TH](#)
SUBJECT: SOUTHERN VIOLENCE: TAK BAI DEATHS - NO ONE
RESPONSIBLE, COURT SAYS

REF: A. BANGKOK 00125 (PM ABHISIT'S PLAN)
[1](#)B. BANGKOK 00078 (RECENT COURT RULINGS ON DEATHS
AND DISAPPEARANCES

BANGKOK 00001320 001.2 OF 002

Classified By: DEPUTY CHIEF OF MISSION JAMES F. ENTWISTLE, REASON 1.4 (B) AND (D)

SUMMARY AND COMMENT

[1](#)1. (C) The Songkhla Provincial Court on May 29 ruled that security forces were not responsible for the deaths of 78 Malay Muslim Thais who died after security forces put down a demonstration at the Tak Bai police headquarters in 2004. The court decided that officers were merely performing their duty and they were not responsible based on the immunity granted to them through provisions in the Emergency Decree. Human rights organizations and Embassy contacts on southern Thailand in the foreign diplomatic community were universally disappointed with the ruling, saying that it further undermined RTG credibility in the South, and would help the insurgents. The International Commission of Jurists questioned whether the Thai court followed the Thai Criminal Procedure Code in issuing its decision; the court was mandated only to determine whose actions were responsible for the deaths, not to rule on criminal culpability.

[1](#)2. (C) Comment: We were also surprised by this court's ruling, particularly because the inquest was not to hold anyone criminally responsible for the tragedy, but rather to determine whose actions caused the deaths. There is ample evidence and testimony -- by witnesses, through the report of the National Reconciliation Committee, and video footage -- that the deaths of detainees were the direct result of the way security forces dealt with the protest and its aftermath. Decisions like this undercut pronouncements by Prime Minister Abhisit that his government would deal with the Southern conflict through addressing injustices, both past and present. It is our understanding that the case will now be referred to police for an investigation into whether a criminal indictment should be issued. It is difficult to see, however, how a criminal investigation will proceed with a court determining that no one was responsible. End Summary

and Comment.

BACKGROUND ON THE TAK BAI INCIDENT

13. (U) On October 25, 2004, some 1,500 protesters gathered in front of the Tak Bai police station to protest the arrest by police of six Muslim village defense volunteers who allegedly gave their weapons to suspected insurgents. The demonstration began peacefully, but the crowd grew more agitated until mid-afternoon, when some demonstrators tried to break through a police barrier. The Commander of the 4th Army Area at the time, Lt. General Phisarn Wattanawongkiri, gave orders to forcibly disperse the crowd with water cannon and tear gas, after which soldiers began shooting their weapons, ostensibly firing only warning shots. The Mass Communication Organization of Thailand, however, filming the incident, captured on film at least one soldier firing horizontally into the crowd of demonstrators. Military officials at the time explained that firing horizontally was a technique used to force the demonstrators to lie down on the ground. Some seven civilians and at least one police officer died of gunshot wounds. After ordering the protesters to lie on the ground, soldiers and police stripped them of their shirts and belts and bound their hands behind their backs. Witnesses and video accounts show demonstrators being kicked and hit with batons and rifle butts as they lay waiting to be transported to detention. Soldiers eventually stacked the detained protesters five and six deep in trucks for what turned into an approximately five hour transport to an Army camp. During the journey to the camp, 78 people died of suffocation.

COURT RULING HURTS RTG CREDIBILITY

BANGKOK 00001320 002.2 OF 002

14. (C) The Thai government's credibility in southern Thailand suffered yet another blow on May 29 when a court in Songkhla read its decision on the post mortem inquest into the deaths of 78 Malay Muslim Thais who died as a result of military and police actions after the Tak Bai protest in 2004. Remarkably, the court found no one responsible for the deaths because army and police personnel were working within the bounds of their official duties when they stacked protesters in trucks. The court also ruled that soldiers and police caught on film kicking and hitting detainees with batons and rifle butts were not acting under orders, and so no higher-ranking officials were responsible.

15. (SBU) In its decision, the Songkhla Provincial Court determined that the military had compelling reasons for transporting the detainees in the way that it did, saying that the number of demonstrators (over 1,200), coupled with the limited space in which they were detained, the time of day, and the location of the demonstration near the Thaksin Ratchaniwet Palace, justified security officials' method of transport to the military camp some 150 kilometers away. In its decision, the court contended that not moving the detainees quickly could have led to more "serious and unexpected" incidents. After finding that the authorities in questions were performing their duties in good faith, the court cited line 17 of the Emergency Decree, and found that officials performing their duties in good faith could not be subject to criminal, civil, or disciplinary liabilities. (According to the investigation of the incident by the National Reconciliation Commission, the detainees were not quickly transported to the army camp; many detainees were not transported until late in the evening.)

16. (C) Embassy contacts among the human rights, legal and foreign diplomatic communities are dismayed by this decision. British, Australian and European diplomats, who were briefing us on recent trips to southern Thailand by their Heads of Missions at the time the decision was announced,

expressed shock. Sunai Phasuk, our Human Rights Watch contact, opined that the ruling would undermine the government's credibility and be used as one more recruiting tool for the militants, and our contacts at the International Commission of Jurists (ICJ), who were in Songkhla observing the proceedings, said they were disappointed and questioned whether the court followed the required procedures in the Thai Criminal Procedures Code for a post mortem inquest.

17. (C) According to the ICJ, section 150 of the Thai Criminal Procedures Code obliges the court to determine who the deceased were, the place, time, cause, and circumstances of their deaths, and, if the deaths were caused by someone, "it shall be stated as far as it could be ascertained, who was the alleged person who caused the injury." Erin Shaw, an ICJ legal specialist, said the result of a post mortem inquest in Thai law is not intended to establish criminal culpability; she said it is solely intended to establish whose actions caused the death. The court, she said, did not consider the factual circumstances of the deaths and essentially refused to decide whose actions caused them. The next step, said Erin, is for a criminal investigation conducted by the police, the results of which will be sent to the Attorney General, who has the power to decide whether to seek a criminal indictment. ICJ, Erin said, was concerned about what would happen with the criminal investigation now that the court has decided that no one was responsible. Given the Government's public commitment to ensure that justice is served in key cases involving the alleged violations of human rights, the courts decision was surprising and troubling, she said.
JOHN